

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE SULFURIC ACID ANTITRUST LITIGATION)	MDL Docket No. 1536 Case No. 03 C 4576
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This Document Relates To:)	Honorable Judge David H. Coar Magistrate Judge Jeffrey Cole
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<u>ALL RELATED ACTIONS</u>)	

JOINT STATUS REPORT

Pursuant to the Court's order of September 3, 2008, Plaintiffs and Defendants Noranda, Inc., Falconbridge Limited, and NorFalco LLC (collectively the "Noranda Defendants"), General Alum New England Corp. d/b/a GAC Chemical Corporation, ("GAC"), Intertrade Holdings, Inc., Koch Sulfur Products Company, Koch Sulfur Products Company LLC and Pressure Vessel Services, Inc. hereby submit their Joint Status Report.

1. The first of these consolidated antitrust cases arising under Section 1 of the Sherman Act was filed on February 21, 2003. On July 1, 2003, the Multidistrict Litigation Panel entered a Conditional Transfer Order establishing this multidistrict litigation action before this Court. *See* Dkt. No. 1.

2. Thereafter, the parties engaged in extensive fact and expert discovery. With limited court-ordered exceptions, fact discovery in this case closed on July 1, 2005. The parties completed expert discovery in April 2006.

3. On April 27, 2006, GAC filed its Rule 12(b)(6) motion to dismiss the Plaintiffs' Third Consolidated Amended Class Action Complaint. *See* Dkt. No. 339. That motion was fully briefed on June 15, 2006. GAC's Position: GAC further notes that its pending motion to

dismiss renews and incorporates the motion to dismiss GAC originally filed on July 30, 2004 with respect to Plaintiffs' Second Consolidated Amended Class Action Complaint.

4. On May 22, 2006, all Defendants filed a joint *Daubert* motion to exclude the testimony of Plaintiffs' expert, Dr. Robert Tollison. *See* Dkt. No. 353. In addition, the Noranda Defendants, PVS, GAC, and Intertrade, among others, filed a *Daubert* motion to exclude the testimony of Plaintiffs' expert, Dr. James McClave. *See* Dkt. No. 350. The Koch Defendants filed a separate *Daubert* motion to exclude Dr. McClave's testimony. *See* Dkt. No. 356. The Marsulex Defendants have since withdrawn their support for, and joinder in these *Daubert* motions due to the settlement agreement they entered into with Plaintiffs.

5. On June 15, 2006, the Court referred the three *Daubert* motions to Magistrate Judge Jeffrey Cole for the preparation of reports and recommendations. *See* Dkt. Nos. 371 and 374. All three *Daubert* motions were fully briefed on September 14, 2006, and on November 1, 2006, the parties presented oral arguments on the motions. The motions remain pending before the Magistrate Judge.

6. On or before July 31, 2006, the Defendants, other than E.I. du Pont de Nemours and Company ("DuPont") who had reached a settlement agreement with Plaintiffs, filed a total of nine separate motions for summary judgment. Each Defendant, other than DuPont, joined in the motions filed by the other defendants. However, Defendants Chemtrade Logistics (U.S.), Inc. and Marsulex, Inc. (collectively "the Marsulex Defendants") subsequently withdrew their respective motions for summary judgment and their joinder in the other defendants' motions due to their settlement with the Plaintiffs. *See* Dkt. No. 569.

7. Thus, there are seven motions for summary judgment that have been fully briefed since December 12, 2006 that are currently pending before the Court:

- (a) Motion for summary judgment filed by GAC (Dkt. No. 413);
- (b) Motion for summary judgment filed by Noranda (Dkt. No. 418);
- (c) Motion for summary judgment filed by Intertrade (Dkt. No. 422);
- (d) Motion for summary judgment filed by Falconbridge Limited (Dkt. No. 426);
- (e) Motion for summary judgment filed by PVS, Inc. (Dkt. No. 430);
- (f) Motion for summary judgment filed by NorFalco LLC (Dkt. No. 433); and
- (g) Motion for summary judgment filed by Koch Sulfur Products Company and Koch Sulfur Products Company LLC (Dkt. No. 439).

8. On March 21, 2007, the Court granted Plaintiffs' motion to certify a litigation class of "All persons (excluding federal, state, and local governmental entities and political subdivisions, the Defendants, and their respective parents, subsidiaries and their affiliates) who purchased sulfuric acid in the United States directly from one or more of the Defendants or their parents, subsidiaries, affiliates, or joint ventures during the period from January 1, 1988 through January 16, 2003."¹ *See* Dkt. Nos. 535 and 536.

9. To date, three of the Defendants in this action have reached settlements with Plaintiffs. On December 20, 2006, the Court approved Plaintiffs' settlement with DuPont for the sum of \$5 million. *See* Dkt. No. 531. On May 15, 2008, the Court approved Plaintiffs' settlement with Marsulex and Chemtrade for a combined sum of \$1.15 million. *See* Dkt. No. 589. These settlements provide for the Settling Defendants to cooperate in the continuing prosecution of this case.

¹ For purposes of this litigation, "sulfuric acid" refers to non-fuming sulfuric acid (chemical formula: H₂SO₄), which is for illustration purposes (although not exclusively) sold at strengths 93% and 98%. It does not include spent regenerated or Florida fertilizer sulfuric acid. *See* Dkt. No. 552 and Exhibits "A" and "B" thereto.

10. Settlement discussions between Plaintiffs and certain remaining Defendants occurred more than a year ago, but no agreements were reached, and there are no discussions presently.

11. No pretrial schedule or trial date has been set.

Dated: September 16, 2008

Respectfully submitted:

/s/ Mary Jane Fait

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CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of September, 2008, a copy of the ***Joint Status Report*** was served by causing a true and correct copy to be delivered via facsimile and overnight delivery via Federal Express to the attached Service List.

Dated: September 16, 2008

Respectfully submitted,

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